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In re Application of BRUER et al :
U.S. Application No.: 10/575,018 :
PCT Application No.: PCT/EP04/11061 :
Int. Filing Date: 04 October 2004 : DECISION
Priority Date Claimed: 06 October 2003 :
Attorney Docket No.: 2584SG-3 :
For: INSULATING ELEMENT FROM MINERAL :
FIBERS FOR SHIPBUILDING :

This is in response to applicant's "Renewed Petition under 37 C.F.R 1.10(d)" filed 11 August 2006.

BACKGROUND

On 04 October 2004, applicant filed international application PCT/EP04/11061, which claimed priority of an earlier European Patent Office application filed 06 October 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 21 April 2005. The thirty-month period for paying the basic national fee in the United States expired on 06 April 2006.

On 06 April 2006, applicant purportedly filed national stage papers in the United States Designated/Elected Office (DO/EO/US) via the Express Mail Post Office to Addressee Service of the USPS ("Express Mail"). The submission was accorded a receipt date of 07 April 2006.

On 08 June 2006, applicant filed a petition under 37 CFR 1.10(d).

On 21 July 2006, this Office mailed a decision dismissing the 08 June 2006 petition.

On 11 August 2006, applicant filed the present renewed petition under 37 CFR 1.10(d).

DISCUSSION

37 CFR 1.10(d) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Petitioner has previously satisfied items (1) and (2) above.

With regard to item (3) above, the petition does not sufficiently establish that the national stage papers were deposited in Express Mail prior to the last scheduled pickup on 06 April 2006. Although the affidavits of Eddie Abeyta constitute an adequate showing that the correspondence was deposited in Express Mail prior to the last scheduled pickup on 06 April 2006, 37 CFR 1.10(d)(3) specifically states, "Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS." (Emphasis added.) The renewed petition does not include evidence from the USPS or that came into being after deposit and within one business day of the deposit of the national stage papers in Express Mail. See MPEP 513, VI. PETITION TO CORRECT INCORRECTLY ENTERED DATE-IN, which states, "Evidence from the USPS may be the "Express Mail" Corporate Account Mailing Statement. Evidence that came into being within one day after the deposit of the correspondence as 'Express Mail' may be in the form of a log book which contains information such as the 'Express Mail' number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log."

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.10(d) is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.10(d)".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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